

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

CHAMPION FORDLAND, INC.

Employer

and

Case 4–RC–20177

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL UNION NO. 229,  
AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (herein called the Act), a hearing was held before a hearing officer of the National Labor Relations Board (herein called the Board).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. The Employer is engaged in the sale and service of new and used Ford Motor Company (herein called Ford) vehicles at a dealership in Scranton, Pennsylvania (herein called the Dealership). The Petitioner seeks a self-determination election in a voting group of service writers, service advisors, and warranty clerks to determine whether they wish to be included in the existing unit.<sup>1</sup> The Petitioner has represented parts and service employees at the Dealership for approximately 30 years. The parties' most recent collective-bargaining agreement is effective from March 19, 2000 through March 18, 2004. The existing unit, as described in the

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<sup>1</sup> The Petitioner withdrew two related petitions involving the Employer. *Champion Fordland, Inc.*, Cases 4-UC-381 and 4-AC-81.

contract, consists of “all named employees,”<sup>2</sup> technicians, senior/junior parts employees, porters, new car/used car reconditioning employees, new car check-in employees, parts receiving/driver employees and a category for part-time employees designated as ‘Others.’” The Employer contends that its contract with the existing unit bars the Board’s consideration of the petition in this case. However, “[t]o serve as a bar, a contract must clearly by its terms encompass the employees sought in the petition.” *Appalachian Shale Products Co.*, 121 NLRB 1160, 1164 (1958). The bargaining unit set forth in the subject agreement does not include any of the petitioned-for job classifications. Accordingly, I find that the agreement does not bar the petition in this case, and that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. See *Moore-McCormack Lines, Inc.*, 181 NLRB 510 (1970).

5. There is only one employee in each of the classifications listed in the petition: service writer Curt Blackledge, service advisor Diane Horrocks-Dalton, and warranty clerk Kimberly Fletcher.<sup>3</sup> The Employer contends that the petition should be dismissed because Blackledge, Horrocks-Dalton, and Fletcher are supervisors within the meaning of Section 2(11) of the Act or, alternatively, that the petitioned-for voting group does not share a community of interest with the employees in the existing unit.<sup>4</sup>

Steven Ewing is the Employer’s president, Peter Romano serves as the general manager of the Dealership, and Gary Fowler has been the parts and service director for the last three months. The parts and service department includes the service advisor, service writer, warranty clerk, and the employees in the existing unit. For a month or two before Fowler became employed at the Dealership there was no parts and service director, and Horrocks-Dalton and Fletcher were temporarily in charge of the department.<sup>5</sup> The service writers and warranty clerk are also in charge of the parts and service department on the days when Fowler is not in the office, including every third Saturday.

The service writer asks customers what work is needed on their vehicles and prepares repair orders based on their responses. The service writer then dispatches each work assignment to a technician. The Employer employs about ten to twelve technicians, who are classified as “A,” “B,” or “C” technicians, depending on their length of service and qualifications. The technicians are certified to do particular types of automotive work, such as transmission work. The service writer determines which technician should receive the assignment based on the technicians’ abilities, certifications, qualifications, and workload, often using a chart that indicates each technician’s training. For example, only one technician is certified to perform

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<sup>2</sup> The two “named employees” are Senior Counter Parts employee Joe Don Vito and Technician Kenneth Holmza. The parties appended side letters to the contract governing the compensation of these two employees.

<sup>3</sup> At the hearing, witnesses used the titles “warranty clerk” and “warranty administrator” interchangeably. They also used the titles “service writer” and “service advisor” interchangeably, and the record shows that these positions have the same responsibilities. This Decision will refer to Fletcher as a warranty clerk and Blackledge and Horrocks-Dalton as service writers.

<sup>4</sup> The Petitioner would be willing to proceed to an election in a unit limited to the petitioned-for employees if a self-determination election is found to be inappropriate. The Employer contends that the service writers, service advisors and warranty clerks constitute an appropriate unit.

<sup>5</sup> They were paid increased salaries during this time period.

alignment work and therefore will receive all such assignments. Blackledge testified that he learned about the technicians' work abilities from discussions with his predecessor and his supervisor when he started work as a service writer about five months ago. After the technician begins the repair job, the service writer obtains from the customer any information needed by the technician, checks on the progress of the technician, calls the customer when the job is completed, and greets the customer when the customer returns to pick up the vehicle. If a service writer needs a technician to perform a high priority job or a job requiring a particular certification, the service writer may interrupt the technician's work on another job. The Employer pays all but one of the technicians on a flat rate system, based on the number of hours they work on each job. Before a service writer presents a bill to a customer, the service writer checks the technician's work order, which shows how much time the technician spent on the job, and records the technician's hourly wage rate. The fixed time standards for doing various types of work are listed in a Ford manual and the Employer's computer program. The service writer and the technician occasionally may discuss how long the technician should spend on a particular job based on the listed standards.<sup>6</sup> A service writer may "dock" time from a technician if the technician has spent more time on an assignment than called for by Ford's standards, causing a reduction in the technician's earnings. According to Parts and Service Director Fowler, a service writer may independently decide to dock a technician's time to conform the time charged on the bill to the price quoted to the customer. Blackledge however, has rarely docked time from technicians and, except on one occasion, has always checked with his superior before doing so.<sup>7</sup> If a technician has a problem performing a job within the appropriate time frame because of unexpected problems, the technician is supposed to discuss the matter with the service writer.

As warranty clerk, Kimberly Fletcher processes warranties, schedules customer appointments, orders parts and prepares the Employer's payroll for the technicians. Based on the technician's report of what work was performed, she determines whether a job is covered by a warranty and then submits the claim to Ford for reimbursement. Fletcher sometimes docks time from technicians for warranty work, based on the fixed time standards established by Ford.

The service writing area is next to the accounting office and adjacent to the garage where the technicians work. The technicians obtain their work assignments from the dispatch board in the office area. The service department is about 20-25 feet away from the parts department. Service writers and the warranty clerk have daily contact with counter parts employees. They also interact with porters and new car check-in employees on a daily basis and with new and used car reconditioning employees less frequently.<sup>8</sup>

Service writers have no independent authority to discipline employees. Romano initially testified that on one occasion, when a technician smelled of alcohol, he told the warranty clerk or a service writer to investigate the situation and report back to him. Fletcher testified, however, that she had reported this situation to Romano and that he had told her not to do anything because of possible legal consequences. Fletcher also testified that she might have informed a

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<sup>6</sup> Ford periodically audits the Dealership to see if the Employer is handling billing and warranty work in an appropriate manner.

<sup>7</sup> The only time Blackledge docked time from a technician without checking was when a technician was unaware that there was a set price for a job.

<sup>8</sup> The record does not indicate the nature of these interactions.

manager that a technician was not reporting to work. There was no evidence, however, that either of these incidents led to employee discipline. Romano testified that he would normally accept a recommendation of discipline from a service writer or warranty clerk, but he did not provide any examples of such recommendations.

The service writers and warranty clerk are paid salary and commissions, whereas all but one of the employees in the existing bargaining unit are paid on an hourly basis.<sup>9</sup> When Fowler is out of the office, the service writers or warranty clerks have the authority to permit employees in the parts and service department to go home in an emergency. The service writers and the warranty clerk attend Ford-sponsored training courses, as do employees in the existing bargaining unit. Fowler, Blackledge, Horrocks-Dalton, and Fletcher share an office. The service writers and warranty clerk do not evaluate other employees, but may at times offer opinions on the technicians' work to their superiors.

A finding of supervisory status is warranted only where the individual in question possesses one or more of the indicia set forth in Section 2(11) of the Act. *Providence Hospital*, 320 NLRB 717, 725 (1996), *enfd.* 121 F.3d 548 (9<sup>th</sup> Cir. 1997); *The Door*, 297 NLRB 601 (1990); *Phelps Community Medical Center*, 295 NLRB 486, 489 (1989). The statutory criteria are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Juniper Industries*, 311 NLRB 109, 110 (1993), *enfd.* 819 F.2d 439 (4<sup>th</sup> Cir. 1987).

The powers enumerated in Section 2(11) are termed the 'primary' indicia. When the issue of supervisory status presents a borderline question, 'secondary' indicia may be considered, but secondary indicia alone will not confer supervisory status under the Act. *Adco Electric, Inc.*, 307 NLRB 1113, 1120 (1992) (citations omitted), *enfd.* 6 F.3d 1110 (5<sup>th</sup> Cir. 1993).

The statutory definition of supervisor specifically indicates that it applies only to individuals who exercise "independent judgment" in the performance of supervisory functions and who act in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 574 (1994). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestion, and between the appearance of supervision and supervision in fact. *Providence Hospital*, *supra* at 725. The exercise of some supervisory authority in a merely routine, clerical or perfunctory manner does not confer supervisory status on an employee. *Id.*; *Juniper Industries*, *above* at 110. The authority effectively to recommend, "generally means that the recommended action is taken with *no* independent investigation by superiors, not simply that the recommendation ultimately is followed." *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982) (emphasis in original). The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *Robert Greenspan, DDS*, 318 NLRB 70, 76 (1995), *enfd. mem.* 101 F.3d 107 (2<sup>nd</sup> Cir. 1996), *cert. denied* 519 U.S. 817 (1996), citing *NLRB v. Lindsay Newspapers*, 315 F.2d 709, 712 (5<sup>th</sup> Cir. 1963); *Gaines Electric*, 309 NLRB 1077, 1078

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<sup>9</sup> There is no evidence showing the amounts of the hourly wages, salaries, or commissions earned by the employees in the existing unit or by Blackledge, Horrocks-Dalton, and Fletcher. The technicians work set hours, from 8:00 a.m. to 4:30 p.m. Fletcher has unspecified set work hours, but she sometimes works outside of those hours as necessary. There is no record evidence about the service writers' work hours.

(1992); *Ohio River Co.*, 303 NLRB 696, 714 (1991), enfd. 961 F.2d 1578 (6<sup>th</sup> Cir. 1992). Job descriptions or job titles suggesting the presence of supervisory authority are not given controlling weight. Rather, the Board insists on evidence supporting a finding of actual authority as opposed to mere paper authority. *East Village Nursing Center v. NLRB*, 165 F.3d 960, 962-63 (D.C. Cir. 1999); *Food Store Employees Local 347 v. NLRB*, 422 F.2d 685, 689 (D.C. Cir. 1969); *NLRB v. Security Guard Service*, 384 F.2d at 149; *North Miami Convalescent Home*, 224 NLRB 1271, 1272 (1976).

The burden of establishing supervisory status is on the party asserting that such status exists. *Fleming Companies*, 330 NLRB No. 32, fn. 1 (1999); *Northcrest Nursing Home*, 313 NLRB 491, 496 fn. 26 (1993); see *Bennett Industries*, 313 NLRB 1363 (1994). The Board has cautioned that the supervisory exemption should not be construed too broadly because the inevitable consequence of such a construction would be to remove individuals from the protections of the Act. *Providence Hospital*, 320 NLRB at 725; *Northcrest Nursing Home*, above at 491. Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Phelps Community Medical Center*, 295 NLRB at 490. The legislative history of Section 2(11) makes it clear that Congress intended to distinguish between employees performing minor supervisory duties and supervisors vested with genuine management prerogatives, and did not intend to remove individuals in the former category from the protections of the Act. S. Rep. No. 105, 80<sup>th</sup> Cong., 1<sup>st</sup> Sess., 4 (1974), reprinted in 1 Legis. Hist. 407, 410 (LMRA 1947). The legislative history also shows that Congress considered true supervisors to be different from lead employees or straw bosses that merely provide routine direction to other employees as a result of superior training or experience. *Id.*, reprinted at 1 Legis. Hist. at 410 (LMRA 1947). *Providence Hospital*, supra at 725; *Ten Broeck Commons*, 320 NLRB 806, 809 (1996). An individual will not be found to be a supervisor unless he or she has a “kinship to management.” *Advanced Mining Group*, 260 NLRB 486, 507 (1982), enfd. mem. 701 F.2d 221 (D.C. Cir. 1983), quoting *NLRB v. Security Guard Service*, 384 F.2d 143, 149 (5<sup>th</sup> Cir. 1969), enfg. 154 NLRB 8 (1965). See *Adco Electric*, 307 NLRB at 1120. Further, supervisory direction of other employees must be distinguished from direction incidental to an individual’s technical training and expertise, and technical employees will not be found to be supervisors merely because they direct and monitor support personnel in the performance of specific job functions related to the discharge of their duties. *Robert Greenspan, DDS*, 318 NLRB at 76; *New York University*, 221 NLRB 1148, 1156 (1975).

It is undisputed that the service writers and warranty clerk do not have the authority to hire, transfer, lay off, recall, promote, reward, or discipline employees, to effectively recommend such actions, or to adjust employee grievances. The Employer bases its claims of supervisory status on its contention that they responsibly direct and assign work to technicians, and that they have the authority to discipline employees.

The service writers do not exercise independent judgment in assigning work to the technicians. Rather, they distribute work assignments based on the technicians’ certifications, training, workload and known abilities. It is well established that distributing assignments to employees whose skills are not significantly varied, or to employees with different skills, whose abilities are well known, is generally routine and not supervisory. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1138-1139; (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107 (1997);

*Hexacomb Corp.*, 313 NLRB 983, 984 (1994). Service writers do not rely on their discretion in deciding how much time should be spent on a job; these decisions are based on the standards set forth in the Ford manual or the Dealership's computer program. Service writers also do not use independent judgment in determining when to dock a technician's time because they essentially match the amount of the technician's working hours to the amount quoted to the customer. Moreover, they are likely to consult their superior before docking a technician.

While Fletcher and Horrocks-Dalton were temporarily responsible for the parts and service department before Fowler's hire, there is no evidence that they possessed or exercised any supervisory authority during this time period or at any other time when Fowler has been out of the office. A mere grant of supervisory authority, without evidence of exercise of that authority, does not establish supervisory status. *North Miami Convalescent Home*, 224 NLRB 1271, 1272 (1976). Additionally, the few incidents discussed in the record fall far short of establishing that the service writers or warranty clerk have ever possessed or exercised any disciplinary authority. While the service writers and warranty clerk share an office with a supervisor and receive a salary and commission rather than hourly wages, these factors are at best secondary indicia which cannot transform employees into statutory supervisors in the absence of any evidence that they possess at least one of the supervisory indicium. *Billows Electric Supply of Northfield, Inc.*, 311 NLRB 878 fn. 2 (1993); *St. Alphonsus Hospital*, 261 NLRB 620, 626 (1982); enfd. mem. 703 F.2d 577 (9<sup>th</sup> Cir. 1983). Based on the foregoing, I find that the Employer has not satisfied its burden of showing that the service writer, service advisor or warranty clerk is a supervisor within the meaning of the Act. *Shen Automotive Dealership Group*, 321 NLRB 586, 594 (1996); *Bob Bundy, Inc.*, 205 NLRB 336, 349 (1973).

The Employer contends that the service writers and warranty clerk should not be granted a self-determination election because they lack a community of interest with the existing unit members. In analyzing community of interest, the Board relies on various criteria including differences in method of paying wages or compensation; hours of work; employment benefits; commonality of supervision; similarity of qualifications, training and skills; differences in job functions; frequency of contact with other employees; integration with the work functions of other employees or interchange with them; and the history of bargaining, if any. *Overnite Transportation*, 322 NLRB 723, 724 (1996).<sup>10</sup>

The service writers and warranty clerk have frequent contact with employees in the existing unit and their work is functionally integrated. Thus, Fletcher's work is closely related to that of unit employees, and she regularly interacts with them. The service writers distribute work assignments to technicians and ensure that their work results in the proper payment of wages. At times, they work together to determine how much time a job requires and to obtain needed information from customers. Unit employees and the service writers and warranty clerk are all supervised by Fowler. The service advisors and warranty clerk sometimes have training classes with employees in the existing unit. Considering the common supervision, functional integration and frequent contact, there is a sufficient community of interest between the existing unit employees and the service writers and warranty clerk to warrant the requested self-determination election. *R.H. Peters Chevrolet, Inc.*, 303 NLRB 791, 792 (1991) (service advisors included in unit with mechanics based on community of interest principles); *Honda of*

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<sup>10</sup> An appropriate unit may include both hourly and salaried employees. *Aurora Fast Freight, Inc.*, 324 NLRB 20, 21 (1997).

*San Diego*, 254 NLRB 1248, 1263-65 (1981) (employees of the parts and service departments including the warranty clerk comprised an appropriate unit); *Sacramento Automotive Assn.*, 193 NLRB 745, 746 (1971) (service writers entitled to self-determination election to join unit of technicians, parts employees, and other employees).<sup>11</sup> I further note that there are no employees in the parts and service department other than those in the existing unit and the petitioned-for employees.<sup>12</sup>

Based on the foregoing, I shall direct a self-determination election in a voting group consisting of the service writers, service advisors, and warranty clerks, to determine whether they wish to be represented by the Petitioner for the purposes of collective bargaining. See *Sacramento Automotive Assn.*, supra at 746. If a majority of the employees in the voting group vote in favor of such representation, they will be taken to have indicated their desire to constitute part of the existing bargaining unit currently represented by the Petitioner at the Dealership. If a majority does not vote for the Petitioner, the voting group will be taken to have indicated their desire to remain unrepresented.

Accordingly, I find that the following employees constitute an appropriate voting group for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service writers, service advisors, and warranty clerks employed by the Employer at its facility currently located at 118 Linden Street, Scranton, Pennsylvania, excluding all other employees, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

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<sup>11</sup> The Employer asserts that the service writers and warranty clerk, as part of the existing unit, would not responsibly perform their responsibilities vis-à-vis the technicians, and that a warranty clerk could collude with a technician to defraud Ford by submitting a reimbursement claim for work that was never done. The Employer further argues that the proposed unit could lead to a “breakdown of discipline, a disregard of customer needs and the inevitable loss of the Ford Franchise.” These arguments are speculative and have not been adopted by the Board, as indicated by the above-cited cases in which service writers and warranty clerks were included in units with technicians. In this regard, in *R.H. Peters Chevrolet, Inc.*, supra, the Board included service advisors in the same unit as mechanics while noting that the service advisors assigned work to mechanics and thereby helped determine their pay and could also require mechanics to redo work.

<sup>12</sup> The Board has repeatedly found that service employees may be included in an appropriate unit with parts employees and other automobile company dealership employees. E.g., *Gregory Chevrolet, Inc.*, 258 NLRB 233 (1981); *Harry Brown Motor Co.*, 86 NLRB 652, 654 (1949). Indeed, the Board stated in *Worthington Chevrolet, Inc.*, 271 NLRB 365 (1984) that, “where *all* employees in the service and parts department of an automobile sales and service establishment perform functions related to the service and repair of automobiles, a unit of *all* employees in the service department is appropriate.” (Emphasis added).

An election by secret ballot shall be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently,<sup>13</sup> subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
LOCAL UNION NO. 229, AFL-CIO**

**LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **May 15, 2001**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

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<sup>13</sup> Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.



## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **May 22, 2001**.

Signed: May 8, 2001

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan

DOROTHY L. MOORE-DUNCAN

Regional Director, Region Four

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420-1285-0000-0000

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